



INDIANA COURT OF APPEALS
ORAL ARGUMENT AT A GLANCE
VALPARAISO UNIVERSITY SCHOOL
OF LAW



TIM SINKS V. KRISTA L. CAUGHEY

Appeal from:

Marion Superior Court, Civil Division
No. 3
The Honorable Patrick McCarty,
Judge

Oral Argument:

Monday, April 21, 2008
3:00—4:00 p.m.
30 minutes each side

CIVIL LAW

Did the trial court err in denying Mr. Sinks' motion to dismiss?

Facts and Procedural History

On June 22, 2002, Krista Caughey was a front seat passenger in a Dodge Stratus operated by her then-husband, Marius Sakalinskas, when a 1994 Ford F-10 pickup truck rear-ended the Stratus at the intersection of U.S. Highway 31 and Stop 11 Road on the south side of Indianapolis. Caughey did not know who was driving or riding in the truck. Following the collision, Sakalinskas called the police, and a Marion County Deputy Sheriff arrived on the scene and spoke with Sakalinskas as well as Michael Grover and Tim Sinks, two men associated with the pickup truck. The sheriff did not prepare a crash report. (According to the record, the sheriff did not prepare an Officer's Standard Crash report because both the automobile and the truck involved in the collision had automobile insurance through the same insurance company, American Family. We note that had the sheriff prepared a crash report, Caughey would surely have known Sinks' identity, and this entire problem would have been avoided.)

Caughey reported the accident and injuries to her automobile insurance carrier,

American Family Mutual Insurance Company, who then informed Caughey that in addition to providing automobile liability insurance coverage on Sakalinskas' car, it likewise maintained liability coverage on the pickup truck. Thereafter, Caughey obtained legal counsel. On July 3, 2002, American Family learned from Grover that he had given Sinks permission to use his pickup truck for a family emergency and that Sinks was driving his car on a suspended license and did not have insurance at the time of the collision. Thereafter, Anthony C. Meyer, an investigator for American Family, conducted an investigation of the accident, which included an interview with Grover on August 8, 2002. Meyer's notes from this interview state the following:

On the day of the incident, [Grover] was at work with fellow employee, Tim Sinks, at Jiffy Lube located on the corner of US 31 South and Stop Eleven Road. Sinks advised that he needed a ride to run an errand and [Grover] indicated that he would be "happy to help him out." However, Sinks misinterpreted [Grover's] overture and jumped into his truck and drove away. [Grover]

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did not mean for Sinks to drive his truck because Sinks was not insured and because [Grover] had spent a lot of money customizing the vehicle. By the time [Grover] got outside, he noticed his truck stopped on 31 with the claimant vehicle stopped in front of it.

Appellant's App. p. 109. On August 16, 2002, Meyer took a recorded statement from Sinks, in which he indicated the following:

- Q) And were [you] driving a pick-up truck that belongs to ah, Mike Grover?
 A) Yes.
 Q) And was it a red Ford F1—150?
 A) Yes.
 Q) Ok. Ok, briefly how did the collision occur?
 A) Ah, the light turned green. We both started to move. She stopped suddenly, I stopped. Just close enough, just to barely make contact with her.

Id. at 113.

At the conclusion of its investigation, American Family did not inform Caughey or Caughey's counsel of its findings, which included the ascertained identity of the owner of the pickup truck and the driver of the truck at the time of the collision. Although Caughey was aware that there were possibly two men present at the scene of the accident associated with the pickup truck, she did not know the identity of either of the men. As a result, before filing her complaint, Caughey's counsel spoke with Rachelle Howell, a claims adjuster for American Family, who informed her that Jackie and Kathy Grover owned the pickup truck. Howell however, incorrectly informed Caughey that Michael was driving the truck on the date of the collision.

On June 18, 2004, four days before the statute of limitations was to expire, Caughey filed a complaint and named Jackie, Kathy, and Michael Grover or "John Doe" as party defendants. Along with the filing of her

complaint, Caughey served American Family with notice of her lawsuit through the service of a summons to defendant "John Doe c/o American Family Insurance Group." Id. at 99.

In answering Caughey's complaint, Defendants Michael, Jackie, and Kathy Grover (collectively "Defendants") denied that Michael "was operating a vehicle at any [time] relevant to this cause of action" and that "the answering Defendants are without sufficient information with which to form a belief whether the unknown person sued as 'John Doe' [was] operating a vehicle at any [time] relevant to this cause of action." Id. at 17. Defendants asserted several affirmative defenses, including that "[t]he damages of Plaintiff, if any, may have been caused by non-parties to this litigation, namely Marius Sakalinskas, Tim Sinks and Tim Small." Id. at 18-19. Included in Defendants' answer and affirmative defenses was a motion to dismiss Kathy and Jackie Grover from the suit because the complaint merely alleged that they owned and insured the truck involved in the collision and a motion to strike Caughey's "complaint against John Doe on the issue of liability of an unknown Defendant for the reason that the complaint demonstrates that the statute of limitations has run," and "[t]he filing of a 'John Doe' complaint can never toll the statute of limitations so as to allow the substitution of a real defendant." Id. at 20-21. Thereafter, the trial court ordered Kathy and Jackie Grover dismissed from the suit and granted Defendants' motion to strike "John Doe" as a defendant.

On January 6, 2006, Michael Grover filed a motion for summary judgment and included in his designated evidence an affidavit in which

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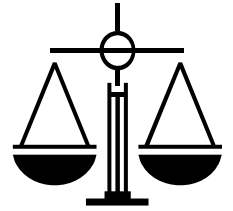
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Michael stated that he owned the truck but was not driving it on the day of the collision and that on the date of the collision “Tim Sinks drove his Vehicle without his permission and consent.” *Id.* at 36. Thereafter, on December 28, 2006, two and a half years after finding out that Sinks may have been the driver, Caughey filed a motion for leave to file an amended complaint to add Sinks as a party defendant. On January 9, 2007, Caughey filed a motion for leave to file a second amended complaint to add American Family as a party defendant. Michael filed an objection to Caughey’s motion to amend, claiming that the statute of limitations for this action had expired and Caughey did not meet the requirements of Indiana Trial Rule 15(C), which, if met, would allow the claim to relate back to the original complaint. Thereafter, the trial court issued an order granting Caughey leave to file a second amended complaint and allowing her to join Sinks and American Family as party defendants. In its order the court stated, in pertinent part:

And the Court having reviewed said Motion and Plaintiff’s proposed Second Amended Complaint and finding therein reasonable proof that the first-named party-Defendant to be joined, Tim Sinks, must have known or should have known that this action would have been brought against him but for a mistake concerning his identity as a proper party and that because of his close relationship with the present Defendant, Michael Grover, it is fair to presume that he, Tim Sinks, anticipated this action, learned of the institution of this action shortly after it was commenced and certainly within the one hundred twenty (120) days after the original Complaint was filed on June 18, 2004, that he will not be prejudiced or unfairly denied the opportunity to present facts or evidence which he would or could have presented had he been expressly named as a party-Defendant in Plaintiff’s original Complaint and that justice requires granting leave to Plaintiff to amend her original

Complaint herein and to add said Tim Sinks as a party-Defendant.

Id. at 75. (Once Sinks was added as a party defendant, American Family provided him with legal representation.) Thereafter, Michael filed an answer to Caughey’s second amended complaint in which he admitted “that he was the owner of the 1994 Ford F-10 pickup truck on June 22, 2002,” Appellee’s App. p. 51, and that “at the time of the collision . . . Sinks had taken the truck without the knowledge and/or consent of [Michael] and was using and/or operating said truck without [Michael’s] permission and without the permission of any person in lawful use and possession of said truck,” *id.* at 7. Sinks then filed a motion to dismiss Caughey’s claim for failure to state a claim upon which relief could be granted. Caughey responded, and Sinks filed a reply to Caughey’s response. Thereafter, the trial court issued an order denying Sinks’ motion to dismiss. This interlocutory appeal ensued.



Parties’ Arguments

Sinks contends that the trial court erroneously denied his motion to dismiss because the statute of limitations had expired and Caughey’s amended complaint did not “relate back” to the original complaint pursuant to Trial Rule 15(C).

Sinks does not argue that the claim asserted in Caughey’s amended complaint did not arise out of the conduct, transaction, or occurrence set forth in the original complaint, but rather he maintains that the other requirements of the rule were not met. Specifically, Sinks contends that he did not receive notice of the institution of the action within 120 days of the commencement of the action and that he did not know

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nor should he have known that but for a mistake concerning the identity of the proper party, the action would have been brought against him within the requisite 120 days.

I. Notice

Sinks maintains that “[t]he fact that as of August 16, 2002, [he] was aware that Caughey filed a claim with her insurance company to recover damages arising out of [the] accident does not fulfill the requirement that he receive[d] notice of her Complaint, filed almost two years later on June 19, 2004.” Appellant’s Br. p. 13. “Notice of the lawsuit may be actual notice or constructive notice, which may be inferred based on either the identity of interest between the old and new parties or the fact that they share attorneys.” *Porter County Sheriff Dept. v. Guzorek*, 857 N.E.2d 363, 369 (Ind. 2006). An “identity of interest” has been achieved and may permit notice to be attributed to the added party when the original and added party “are so closely related in business or other activities that it is fair to presume that the added part[y] learned of the institution of the action shortly after it was commenced.” *Id.* (quoting *Honda Motor Co., Ltd. v. Parks*, 485 N.E.2d 644, 650 (Ind. Ct. App. 1985)).

Indiana Trial Rule 15(c)

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within one hundred and twenty (120) days of commencement of the action, the party to be brought in by amendment:

- (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits; and
- (2) knew or should have known that but for a mistake concerning the identity of the proper party, the action would have been brought against him.

II. Knowledge of Mistake

Sinks additionally maintains that he did not know nor should he have known that he would have been named as a defendant in the original action but for the mistake. Essentially, the issue in this case is whether Sinks had notice of this suit within 120 days of the commencement of this action. If he had such notice, then he should have known that there was a mistake as to the identity of the driver.

CASE LAW TO CONSIDER

Porter County Sheriff Dept. v. Guzorek, 857 N.E.2d 363, 369 (Ind. 2006).

Honda Motor Co., Ltd. v. Parks, 485 N.E.2d 644, 650 (Ind. Ct. App. 1985).

Thompson v. Hays, 867 N.E.2d 654, 656 (Ind. Ct. App. 2007), *trans. denied*.

Schuman v. Kobets, 716 N.E.2d 355, 356 (Ind. 1999).

Crossroads Serv. Ctr., Inc. v. Coley, 842 N.E.2d 822, 824-25 (Ind. Ct. App. 2005), *trans. denied*.

Logan v. Schafer, 567 N.E.2d 855 (Ind. Ct. App. 1991).

Seach v. Armbruster, 725 N.E.2d 875 (Ind. Ct. App. 2000).

In re Integrated Res. Real Estate Ltd. P’ship Sec. Litig., 815 F.Supp. 620, 644 (S.D.N.Y. 1993).

TODAY'S PANEL OF JUDGES

Hon. John T. Sharpnack (Bartholomew County), Presiding

- Judge of the Court of Appeals since January 1991

John T. Sharpnack, a native of Columbus, was appointed to the Court of Appeals by Governor Evan Bayh in January 1991. He received his undergraduate and law degrees from the University of Cincinnati, where he was also Editor-in-Chief of the Law Review. Between degrees, he served a tour in the United States Army.

Following graduation from law school in 1960, Judge Sharpnack joined the Honor Graduate Program at the Antitrust Division of the U.S. Department of Justice in Washington, DC as an attorney. Three years later he returned to Columbus, becoming a partner at Sharpnack, Bigley, David and Rumple, where he practiced until his appointment to the Court.

While in private practice, Judge Sharpnack was active in legal associations and community groups. He served as Chairman of both the Trial Section and the House of Delegates of the Indiana State Bar Association, and for five years was a member of the State Bar's Ethics Committee. For six years he was a member of the Indiana Supreme Court Committee on Rules of Practice and Procedure, and from 1987 to 1988, he was President of the Indiana Defense Lawyers Association. He also served on several local boards, including the Foundation for Youth, the United Way, and the Harrison Township Volunteer Fire Department.

Judge Sharpnack, who served as the Chief Judge of the Court of Appeals from September 9, 1992 to December 31, 2001, was retained on the Court by election in 1994 and 2004.

"Appeals on Wheels"

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

This is the Court of Appeals' 213th case "on the road" since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. Nancy H. Vaidik (Porter County)

- Judge of the Court of Appeals since January 2000

Nancy H. Vaidik was appointed to the Court by Governor Frank O'Bannon on January 19, 2000. She grew up in Portage, Indiana, and graduated from Valparaiso University with High Distinction in 1977 and from Valparaiso University School of Law in 1980.

Prior to her elevation to the appellate court, Judge Vaidik served as a trial court judge in Porter County for seven years. She began her legal career with the Porter County Prosecutor's Office, achieving the status of chief deputy prosecutor before joining the law firm of J.J. Stankiewicz and Associates.

Judge Vaidik is a former adjunct professor of law at Valparaiso University School of Law and is currently an adjunct professor of law at Indiana University School of Law in Bloomington. She teaches for the National Institute for Trial Advocacy and the College of Law of England and Wales. She is the former president of the Indiana Judge's Association and has received numerous awards, including the Indiana Domestic Violence Coalition Judge of the Year and the Paragon of Justice award from the BLSA and HLSA chapters at Valparaiso University School of Law.

Judge Vaidik, who was retained on the Court by election in 2002, is married and has two daughters.

The 15 judges of the Indiana Court of Appeals issue more than 2,800 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



TODAY'S PANEL OF JUDGES**Hon. Michael P. Barnes (St. Joseph County)**

- Judge of the Court of Appeals since May 2000



Michael P. Barnes was appointed to the Indiana Court of Appeals by Governor Frank O'Bannon on May 22, 2000. He received his B.A. from St. Ambrose College in Davenport, Iowa in 1970 and his J. D. from the University of Notre Dame Law School in 1973.

Judge Barnes was a Deputy Prosecuting Attorney and privately practiced law in South Bend from 1973 to 1978. In 1978 he was elected the St. Joseph County Prosecuting Attorney, a position he held for 20 years. During that tenure, Judge Barnes was elected President of the National District Attorneys Association (1995-1996), Chairman of the Board, Indiana Prosecuting Attorneys Council (1982-1983, 1992-1993), President of the St. Joseph County Bar Association (1992-

1993), National Board of Trial Advocacy (1995-1996), National Advisory Council on Violence Against Women (1997), Chairman of the Board of Regents, National College of District Attorneys (1997-1998), American Prosecutor's Research Institute (1997-1998), and various other professional and civic organizations.

Judge Barnes is a member of the Indiana Bar Foundation, the St. Joseph County Bar Association, and serves on the Board of Directors of the Friends of the St. Joseph County Juvenile Justice Center and the Indiana Judges Association.

Judge Barnes, who was retained on the Court of Appeals by election in 2002, is married and has two sons.

ATTORNEYS FOR THE PARTIES

For Appellant, Tim Sinks:
W. Brent Threlkeld
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Indianapolis

W. Brent Threlkeld received his B.S. degree in 1968 from Indiana State University, and his J.D. from Indiana University School of Law-Indianapolis in 1971. He was admitted to the Indiana Bar in 1972. From 1972-1975, he served in the United States Marine Corps as a Judge Advocate and was appointed a Military Judge in his final year of service. After entering private practice in 1975, he served as a part-time Marion County deputy prosecutor from 1979 to 1982.

Mr. Threlkeld has been practicing in the area of defense litigation since 1975. In 2000, he co-founded the firm of Threlkeld Reynolds, focusing on all aspects of insurance defense litigation.

Mr. Threlkeld is admitted to practice before the Indiana Supreme Court, the U.S.

District Court for the Northern and Southern Districts of Indiana, the U.S. Court of Appeals for the 7th Circuit, the U.S. Court of Military Appeals, and the U.S. Supreme Court. He is also a member of Phi Alpha Delta, the Indianapolis Bar Association (Litigation Section), Indiana State Bar Association, Defense Trial Counsel of Indiana, Defense Research Institute, Inc., American Board of Trial Advocates, and the International Association of Defense Counsel.

Mr. Threlkeld was designated an Indiana Super Lawyer by *Indianapolis Monthly* magazine in 2004, 2005, 2006, 2007 and 2008. The *Indiana Jury Verdict Reporter* recognized him as one of Indiana's "Most Prolific Trial Attorneys" for several years. In 2005, the Indianapolis Bar Association named him a Distinguished Fellow. DTCL named him the 2006 Defense Lawyer of the Year.



For Appellee, Krista L. Caughey:
Kelli J. Young
Law Office of Kelli J. Young
Indianapolis

Kelli J. Young is a sole practitioner in Indianapolis. She obtained her A.S. degree in 1992 and her B.S. degree in 1994 from the University of Indianapolis, where she was elected and inducted to membership in Alpha Sigma Lambda, a national honor society for evening college students. She obtained her J.D. from Indiana University School of Law – Indianapolis in 1999. Ms. Young is admitted to practice before the Indiana Supreme Court and the U. S. District Court for Northern and Southern Indiana.

During her eight years of practice, Ms. Young has concentrated in the areas of family law, general civil litigation, estate administration and plaintiff personal injury work. She was a co-author of an article in 2003 entitled "Practice Management" published in Tort Source, a publication of the tort trial and insurance practice section of the American Bar Association. She has also served as a pro temp judge for the Pike Township Small Claims Court in Indianapolis. She recently obtained her certification as a domestic relations mediator.